

HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:12283 OF 2007

Dated: 14.06.2007

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Between:

1. The Divisional Forest Officer, Khammam and others
..Petitioners

And

M. Ramakrishna Pitcheswara Rao.
..Respondent

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:12283 OF 2007

ORDER: (per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed challenging the order, dated 15.3.2007 passed by the A.P. Administrative Tribunal in O.A.No.803 of 2007.

The respondent herein is the applicant before the Tribunal. He filed the above O.A. seeking to declare the action of the petitioners herein in not considering his case for promotion to the post of Forester as per the Government circular Memo No.34633/Ser.C/99, G.A. (Ser.C) Department, dated 4.11.1999 while considering the cases of his juniors to the post of Forester as illegal and consequently, to declare that he is entitled to be promoted as Forester with effect from the date on which, the period of punishment of stoppage of increments was completed i.e., from March, 2004 with all consequential benefits.

The tribunal having observed that the applicant is entitled to be considered for promotion with effect from August, 2004, and as his juniors to the applicant have been promoted in August, 2006, the action of the petitioners herein in not considering the case of the applicant for such promotion is arbitrary and illegal, directed the petitioners herein to consider the case of the applicant for promotion to the post of Forester, which is a non-selection post for which the criteria is only seniority, from the date on which his juniors were promoted i.e., August, 2006 and pass necessary orders giving promotion to the applicant as Forester on par with his juniors i.e., with effect from August, 2006 and that such exercise shall be completed within a period of four weeks from the date of receipt of that order. Having aggrieved by the same, the petitioners-authorities filed the present writ petition.

It is the case of the petitioners herein that as the applicant was undergoing punishments, his case was not considered. It is also their case that subsequent to G.O.Ms.No.342, dated 4.8.1997, a circular

memo dated 4.11.1999 was issued clarifying that the employees whose increments were withheld shall not be recommended for promotion during the period for which the increments were ordered to be withheld with effect from the date of issue of the order imposing the penalty and that the period of punishment of the respondent-applicant will be completed by August, 2007 and therefore, it cannot be said that the respondent is entitled for promotion from August, 2006 and the tribunal is not justified in allowing the O.A.

On the other hand, it is contended by the learned Counsel for the respondent-applicant that on 30th August, 2001 a punishment was imposed on the applicant by the 1st petitioner stopping three annual grade increments with cumulative effect and the punishment will expire by August, 2004 and therefore, he is eligible for promotion. It is further contended that even in view of the clarification issued to G.O.Ms.No.342, the currency of the applicant's punishment expires by August, 2004 and therefore, the applicant should have been considered for promotion and therefore, the order of the tribunal needs no interference.

It is an undisputed fact that on 30th August, 2001 the respondent-applicant was awarded punishment of three stoppage of increments with cumulative effect. It is also an undisputed fact that both the officials and the respondent-applicant relied upon the G.O.Ms.No.342 and the subsequent circular. But there is a controversy with regard to the application of the guidelines or clarifications, as the case may be, to the facts of the case on hand.

A perusal of the G.O.Ms.No.342 , dated 4.8.1997 goes to show that in case of withholding of increments of Pay with cumulative effect, it is stipulated that whenever any Government employee is awarded the penalty of stoppage of increment with cumulative effect, the cases of such employees shall not be considered for promotion/appointment by transfer for twice the period for which increments are stopped with

cumulative effect, both for selection and non-selection posts.

At this stage, it is pertinent to note that the contents of the above G.O. G.O. have been clarified in the subsequent Circular Memo, dated 4.11.1999, which goes to show that where the penalty of stoppage of increments with or without cumulative effect is imposed under rule 9 of the Andhra Pradesh Civil services (Classification, Control and Appeal) Rules, 1991, the increment or increments falling due immediately after the date of issue of the order should be withheld. It is also clarified that,

“ the employee whose increments were withheld shall not be recommended for promotion during the period for which the increments were ordered to be withheld with effect from the date of issue of the order imposing the penalty.”

The above G.O. was issued on 4.8.1997 and the clarification was issued, after a period of two years thereafter, by the Secretary to Government. Be that as it may.

In the light of the above clarification and in view of the fact that the applicant has already undergone the penalty period, We feel that the tribunal is justified in directing the authorities to promote the applicant on par with his juniors and therefore, the order impugned herein needs no interference by this Court. Hence, there are no merits in this writ petition and the same is liable to be dismissed.

Accordingly, this W.P. is dismissed. No costs.

Justice T. Meena Kumari

Justice G. Chandraiah

Date: 14th June, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI

**&
HONOURABLE SRI JUSTICE G. CHANDRAIAH**

WRIT PETITION No:12283 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

14/06/2007

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